

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**TROY D. SMITH**

Claimant

VS.

**GOODYEAR TIRE & RUBBER CO.**

Self-Insured Respondent

Docket No. **1,050,654**

**ORDER**

Claimant requested review of the April 4, 2012 Post-Award Medical Award by Administrative Law Judge Rebecca A. Sanders. This is a post-award proceeding for medical benefits. The case has been placed on the summary docket for disposition without oral argument.

**APPEARANCES**

John J. Bryan of Topeka, Kansas, appeared for the claimant. Patrick M. Salsbury of Topeka, Kansas, appeared for the self-insured respondent.

**RECORD AND STIPULATIONS**

The Board has considered the post award record listed in the Award.

**ISSUES**

The claimant suffered a work-related left leg injury on January 20, 2009. The claim was resolved by a settlement hearing on October 28, 2011, which provided, in part, that claimant retained the right to future medical treatment. On March 6, 2012, claimant filed an Application for Post Award Medical seeking evaluation and treatment for his left knee.

The Administrative Law Judge (ALJ) denied claimant's request for additional medical treatment and determined claimant did not provide sufficient evidence to support his request for additional medical treatment for his left knee. The ALJ specifically noted the medical evidence claimant proffered only included the reports concerning the treatment in 2009 for the underlying injury.

Claimant requests review of whether the ALJ erred in denying him additional medical treatment. Claimant argues that his condition has progressively worsened due to swelling, grating, popping and pain in his knee since his surgery in 2009. Claimant further argues that his testimony as to his physical condition is sufficient to establish that he is in need of further medical evaluation and treatment.

Respondent argues the ALJ's Post Award Medical Award should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant was injured on January 20, 2009, when he was going down some stairs, slipped and injured his left knee. Claimant was provided conservative care by the company doctor but after an MRI revealed a tear of the lateral meniscus in the left knee, claimant was referred to Dr. Peter Lepse, an orthopedic surgeon. Ultimately, Dr. Lepse performed an arthroscopic partial lateral meniscectomy on claimant's left knee on May 13, 2009. Claimant was released to return to work, without restrictions on June 1, 2009. Claimant continued working for respondent until July 21, 2011.

Claimant testified that his knee condition had gotten better for about six to nine months after the surgery but then had worsened. On June 22, 2011, claimant's attorney sent a letter to respondent's attorney asking whether respondent would be willing to provide additional treatment for claimant's left knee as he was still having problems. However, instead of pursuing additional medical treatment the claimant agreed to settle the claim with the understanding that if his knee condition worsened he retained the right to seek additional treatment.

The workers compensation claim was resolved by a settlement hearing on October 28, 2011, wherein claimant was compensated for a 5 percent permanent partial impairment to his left leg. As noted, the parties agreed claimant retained the right to seek future medical treatment upon application.

Claimant testified that he has not had any injuries to his left knee since the surgery in May 2009. As previously noted, on July 21, 2011, claimant voluntarily left respondent's employ. Two days later claimant began working as a motorcycle assembler for the Harley-Davidson factory in Kansas City. His assembler job required him to put fenders on the motorcycle with nuts and bolts, wire the frame, connect wiring and assemble the motor to the frame. This job required claimant to do a lot of standing, squatting, bending and stooping in order to put parts together. Claimant worked at Harley-Davidson from July 2011 through February 9, 2012, and testified that he did not have any injuries to his knee at that job.

On February 18, 2012, claimant began working as a crew scheduler for Kellogg's Bakery in Kansas City, Kansas. This job requires him to perform computer work and therefore he is doing more sitting.

On March 6, 2012, claimant's attorney filed an application for post award medical requesting evaluation and treatment of his left knee. A Post-Award Medical hearing was held on April 3, 2012. At the time of the post award medical hearing, claimant had not seen Dr. Lepse for almost three years. Claimant testified that the condition of his left knee has gradually worsened and he has had increased swelling, popping, grating and stiffness.

According to claimant, he has a constant dull pain and swelling on the outside of his knee. Ice packs reduce the swelling and pain. Claimant agreed that he had not seen any doctor for his knee since he last saw Dr. Lepse in July 2009.

After the entry of an award, an injured worker may apply for additional medical benefits. The Act provides:

At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523 and amendments thereto. The administrative law judge can make an award for further medical care *if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award*. No post-award benefits shall be ordered without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551 and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556 and amendments thereto.<sup>1</sup> (Emphasis added.)

The purpose of a post-award medical proceeding is to determine whether claimant needs additional medical treatment as a result of the injury suffered in the underlying award. A medical condition that was stable can change and require additional treatment. Likewise, a treatment modality not pursued can become appropriate with the passage of time and further change in the claimant's condition.

In a request for post-award medical treatment, the claimant has the burden to prove his right to an award of compensation and prove the various conditions on which his right

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<sup>1</sup> K.S.A. 2009 Supp. 44-510k(a).

depends.<sup>2</sup> In a post-award medical proceeding, an award for additional medical treatment can be made if the trier of fact finds that the need for medical care is necessary to relieve and cure the natural and probable consequences of the original accidental injury which was the subject of the underlying award.<sup>3</sup> In this instance, the controlling issue is whether claimant's present need for medical treatment for his left knee complaints is directly and naturally related to the January 20, 2009 accident.

The claimant has not seen a physician regarding his left knee since he last saw Dr. Lepse in July 2009. Claimant's testimony establishes that he has a left knee condition which needs medical treatment but that testimony neither identifies the condition nor establishes the causation for the unidentified condition. The only medical evidence proffered at the post-award hearing included reports concerning the medical treatment in 2009 for the underlying injury. That evidence has little relevance as it does not address claimant's present need for medical treatment.

The claimant argues that the Board decision in *Berghoefer*<sup>4</sup> supports his argument that his testimony alone, without current medical evidence, is sufficient to establish his entitlement to additional medical treatment. That case is factually distinguishable as Berghoefer had received additional medical treatment and testified, without objection, regarding the medical diagnosis. Consequently, there was some medical evidence proffered in that case to link Berghoefer's medical condition to the underlying injury.

Claimant has the burden of proof to establish that his medical condition is a direct and probable consequence of the original work-related injury. The record presented at the post-award hearing is deficient in this regard. There is no expert medical opinion that claimant's present left knee condition and need for treatment is a direct and natural consequence of the work-related injury established in the underlying Award. And in this instance claimant's testimony alone does not establish that his present left knee condition and need for treatment is a direct and natural consequence of the injury suffered in the underlying Award. Consequently, the ALJ's Post Award Medical Award is affirmed and claimant is denied additional treatment for his left knee condition.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>5</sup> Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

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<sup>2</sup> K.S.A. 44-501(a).

<sup>3</sup> K.S.A. 2009 Supp. 44-510k(a).

<sup>4</sup> *Berghoefer v. Airport Plaza Hotel*, No. 1,002,736, 2008 WL 4857910 (Kan. WCAB Oct. 7, 2008)

<sup>5</sup> K.S.A. 2011 Supp. 44-555c(k).

**AWARD**

**WHEREFORE**, it is the decision of the Board that the Award of Administrative Law Judge Rebecca Sanders dated April 4, 2012, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2012.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

e: John J. Bryan, Attorney for Claimant, [janet@ksjustice.com](mailto:janet@ksjustice.com)  
Patrick M. Salsbury, Attorney for Respondent, [psalsbury@goodellstrattonlaw.com](mailto:psalsbury@goodellstrattonlaw.com)  
Rebecca A. Sanders, Administrative Law Judge